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14 November 1985

NOTE FOR: DCI
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Attached is a memorandum from Chuck Briggs containing final language from the conference report on the Intelligence Authorization Act for FY86. The Bill has been reported out of conference and is in the three legislative day waiting period.

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14 November 1985


MEMORANDUM FOR: Director of Central Intelligence

FROM: Charles A. Briggs
Director, Office of Legislative Liaison

SUBJECT: Conference Report
Intelligence Authorization Act for FY-1986

1. Attached for your meeting with Bud MacFarland this Thursday is a copy of Section 403 of the Conference version of this year's Intelligence Authorization Bill. This provision addresses reporting to the Committees of any transfer of the defense article or service in excess of \$1 million by an intelligence agency.

2. The Conferees note in the attached report language accompanying this provision that they expect completion of our negotiations on informal covert action reporting to obviate any future need to require such reporting in statute.


Charles A. Briggs

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Attachments
as stated

HOUSE OF REPRESENTATIVES

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1986

November __, 1985.--Ordered to be printed

Mr. HAMILTON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2419]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2419) to authorize appropriations for fiscal year 1986 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, having agreed to so recommend, do recommend to their respective Houses as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

COUNTERINTELLIGENCE CAPABILITIES IMPROVEMENTS REPORT

Sec. 402. (a) Within 120 days after the date of enactment of this Act, the President shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the capabilities, programs, and policies of the United States to protect against, detect, monitor, counter, and limit intelligence activities by foreign powers, within and outside the United States, directed at United States Government activities or information, including plans for improvements which presently are within the authority of the executive branch to effectuate, and recommendations for improvements which would require legislation to effectuate.

(b) The report described in subsection (a) of this section shall be exempt from any requirement for publication or disclosure.

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

Sec. 403. (a)(1) During fiscal year 1986, the transfer of a defense article or defense service exceeding \$1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947.

(2) Paragraph (1) does not apply if --

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer --

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section --

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms "defense articles" and "defense services" mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

(3) the term "transfer" means --

(A) in the case of defense articles, the transfer of possession of those articles, and

(B) in the case of defense services, the provision of those services; and

(4) the term "value" means --

(A) in the case of defense articles, the greater of --

(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

(ii) the replacement cost; and

(B) in the case of defense services, the full cost to the Government of providing the services.

TITLE V -- GENERAL PROVISIONS

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

Sec. 501. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW

Sec. 502. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2419) to authorize appropriations for fiscal year 1986 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

-14-

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committees a report on the capabilities, programs, and policies of the United States to protect against, detect, monitor, counter, and limit intelligence activities by foreign powers, within and outside the United States, directed at United States Government activities or information, including plans for improvements which are within his authority to effectuate and recommendations for improvements which are not within his authority to effectuate. This report is to be exempt from any requirement for publication or disclosure.

The conferees intend that the President will submit within sixty days of the date of enactment of H.R. 2419 an interim report on the same subject as the full report required to be submitted within 120 days of enactment. In developing these reports, the conferees expect the President to consult as appropriate with the intelligence committees with a view toward developing an agenda for action and to consider such information presented to those committees as those committees shall deem appropriate to make available to the President. Submission of the interim report within sixty days is of particular importance to the Senate conferees, since submission of the interim report will coincide with the preparation of a report to the Senate by the Senate Select Committee on Intelligence.

Section 403

Section 403 of the conference report is the same as Section 502(b) of the National Security Act as contained in Section 401(a) of the House bill, with the following changes : (1) Section 403 of the conference report applies only during fiscal year 1986 and (2) technical drafting changes such as renumbering

of provisions and relocation of definitions. Section 403 requires prior notification to the intelligence committees of any covert arms transfer where the value of a single article or service exceeds \$1 million. Prior notification is subject to the same terms and conditions as apply to other significant anticipated intelligence activities under Section 501 of the National Security Act.

The conferees note that the intelligence committees and the Executive Branch have been engaged for well over a year in a cooperative process designed to produce mutual understandings of the term "significant anticipated intelligence activity" as used in Section 501 of the National Security Act of 1947 as it concerns covert action, and in particular covert arms transfers. The conferees express the hope that expeditious completion of this process and fulfillment of the understandings reached in that process will obviate any future need to define further in statute the term "significant anticipated intelligence activity."

TITLE V -- GENERAL PROVISIONS

Section 501

Section 501 of the conference report makes clear that nothing in the Intelligence Authorization Act constitutes authority for the conduct of any intelligence or intelligence-related activity not otherwise authorized by the Constitution or laws of the United States. Section 501 of the conference report is identical to Section 501 of the House bill and Section 401 of the Senate amendment.